

## Deed Notice Guidance

The Department has issued this guidance to assist the regulated community in development of an appropriate Deed Notice. A Deed Notice is required when the Department approves a remedial action which allows soil contamination to remain at a site above the unrestricted use soil remediation standards. The model for the Deed Notice is Appendix E of the Technical Requirements for Site Remediation (TRSR), N.J.A.C. 7:26E. A copy of the TRSR and the Deed Notice model is available from the Site Remediation Program's home page at <http://www.state.nj.us/dep/srp>. Wording of the Deed Notice must be identical to the model except for the language that is bracketed in the document and the exhibits.

### Development of a Proposal For Institutional and/or Engineering Controls.

In addition to the TRSR, the Department has several guidance documents that must be used when designing remedial actions with institutional controls and/or engineering controls or submitting Deed Notices for approval.

- 1) When designing Remedial Actions with engineering and institutional controls the Guidance Document for Remediation of Contaminated Soils, Chapter 4 Remedial Action - Containment and Exposure Controls should be used to ensure all elements of the plan are adequately considered. A copy of the Guidance Document for Remediation of Contaminated Soils is available from the Site Remediation Program's home page at <http://www.state.nj.us/dep/srp>.
- 2) The Department has developed an administrative checklist to ensure the basic elements of a plan that included the use of engineering controls are present in the plan. The party submitting a plan which includes engineering controls should complete and submit the checklist. A copy of the Administrative Checklist for Engineering Control Proposal(s) is available at the end of this guidance.

Residential developments or other similar uses which require the use of institutional and or engineering controls also require special planning, public outreach and other considerations. For multi-unit residential developments a homeowner/condominium /tenant association or other board or group must also be established to provide an information resource to those living in the development and ensure that all controls are monitored and maintained. A single point of contact to interact with DEP representatives must be established by the association.

### Additional Guidance for the Submission of Deed Notice Exhibits

Often insufficient detail is provided for NJDEP approval of proposed Deed Notices. The exhibits in the Deed Notice provide critical technical information to ensure that the institutional and engineering controls are properly documented, maintained and that the inspection and reporting requirements are sufficient.

Following are minimum requirements of the Exhibits as they appear in the TRSR and additional guidance and examples that should be considered in developing a Deed Notice. Each Deed Notice Exhibit must be tailored to the requirements of the individual site.

#### EXHIBIT A Metes and Bounds Description of Property

(Attach a tax map of the site which shows the metes and bounds and the block and lot numbers of the site)

Exhibit A must include a narrative metes and bounds description of the property, which is generally directly from the deed for the property and a copy of the tax map for the property.

*{Example*

*Exhibit A  
Metes and Bounds Description of property*

- *The xyz municipal tax map for the property, block(s) 1,2,3 and lot(s) 1,2,3 is attached as Exhibit A-1.*
- *The metes and bounds description of the property is as follows:  
Beginning at the point .... Use deed metes and bounds.*

## EXHIBIT B

### Description of Affected Areas

(Attach maps, prepared by an engineer or surveyor, showing the location, depth and concentration of all contaminants exceeding applicable remediation standards, showing any institutional or engineering controls implemented or to be implemented at the site)

Contaminant	Concentration	Location
[List contaminants]	[List concentrations]	[Describe location of contaminants by reference to exhibits A and B]

It is suggested that a general site description (setting, size and use) followed by a narrative description of the contaminated areas remaining and/or site wide issues (i.e. Historic Fill) be included here. As required by the TRSR legible map(s) with all **remaining** contaminated sample locations and contaminant concentrations must be included. If more than one map is submitted, maps shall be presented as overlays, keyed to a base map. Separate sample tables may required for complex sites. The map(s) must also depict the location of the engineering controls. This information is available in the site remediation reports generated for the site.

## EXHIBIT C

Include narratives describing institutional and engineering controls and the monitoring and maintenance activities for the institutional and engineering controls.

*{Example - a typical nonresidential deed notice which includes engineering controls. Each deed notice should be tailored to the specific conditions of a site and may require more detail.*

### *Exhibit C*

#### *Deed Notice Monitoring of Compliance and Maintenance*

#### *Narrative Description of institutional and engineering controls*

*Describe each of the controls that are necessary to ensure that the site is protective. It is appropriate to reference other exhibits in the deed notice rather than to duplicate maps or diagrams.*

- *All current and subsequent owners, operators and lessees will be advised of the conditions and provided copies of the Deed Notice.*
- *Engineering controls (examples) include:*
  - A vegetative Cap is located in Area A (see exhibit D, map M1 and As-built diagram in exhibit D, Diagram D2). The cap is 18 inches thick consisting of 12 inches of clean fill material and 6 inches of topsoil. The vegetation will be a native grass which will be resistant to drought.*

- b) *An impermeable cap is located in Area D (see exhibit D, map M1 and As-built diagram in exhibit D, Diagram D1). the Cap consist of X inches of crushed stone as the base and a x inch asphalt top coat. The area serves as automobile parking for the administration building.*
- c) *An impermeable cap is located in Area L (see exhibit D, map M1 and As-built diagram in exhibit D, Diagram D3). The area is a truck traffic and loading zone for the facility. A heavy duty Cap designed for truck traffic has been installed which consists of X inches of crushed stone as the base and X inches concrete.*
- d) *A 6 foot security fence is installed around the site to prevent access to the site soils. Entry to the site is limited by main gates and a service entrance. (See exhibit D Map M1).*
- e) *12"X 12" signs are located in Area Z which read "Authorization and Personal Protective Equipment are required before entry in the Area". The signs are posted every 50 feet.}*

#### Monitoring/inspection

##### *{Example*

*Monitoring of the institutional and engineering control will consist of a {frequency} inspection of the entire site, at a minimum, and an evaluation of the of the cap [and name other engineering controls]. The results of all inspections and maintenance and any disturbances of the controls shall be documented in a logbook, which will be made available on site to the NJDEP upon request. }*

The frequency of inspection and maintenance should be based on conservative estimates of the life expectancy of individual controls. At a minimum for nonresidential sites, yearly inspections should be conducted of the entire site.

#### Maintenance

##### *{Example*

*Maintenance will be conducted as necessary to continually maintain the integrity of all cap materials [and name other engineering controls]. Prevent/minimize disturbance in the capped areas (i.e. excavation, intrusive construction).*

##### *Example*

- *Impermeable capped areas including building foundations, sidewalks, asphalt and concrete paved areas shall be routinely evaluated and maintained. All cracks, damage or wear shall be repaired.*
- *Vegetative Capped areas shall be routinely evaluated for erosion, stressed vegetation, etc. Maintain a regular schedule for mowing and maintaining vegetative growth and reseeding/replanting on an as needed basis.*
- *Fenced areas (describe the fence type, height and location) shall be routinely evaluated for breeches, damage and insure access is limited and gates are secured. Repair of fences and gates shall be conducted as necessary to ensure authorized access only.*
- *Signs shall be evaluated for location, visibility and maintained to ensure that they remain readable.}*

#### Reporting

##### *{Example*

*Pursuant to N.J.S.A. 58:10B-13.1, monitoring for compliance and effectiveness of the institutional and engineering control(s) shall be conducted and a certification submitted to the Department every two years in writing that the institutional and engineering control(s) is\are being properly maintained and continue to be protective of public health and safety and the environment. Any such certification shall include the information relied upon to determine that no changes have occurred.}*

## EXHIBIT D

Include maps and diagrams of as-built engineering controls. These maps and diagrams must show the location of the engineering controls. Maps shall be compatible with the Department's Geographic Information System. For requirements on electronic data submission, see N.J.A.C. 7:1 Appendix A. For additional guidance, see the version of

the Guidance for the Submission and Use of Data in GIS Compatible Format most recent to the time of submission. This guidance document can be found at [www.state.nj.us/dep/srp/regs/techrule/techgis2.htm](http://www.state.nj.us/dep/srp/regs/techrule/techgis2.htm). The following shall be included as part of this Exhibit:

1. A clean legible copy of that section of the United States Geological Survey Quadrangle map where the site is located with the site clearly identified on this map. The scale of this map should include enough of the surrounding community and road system so the site can be easily identified from air photography;
2. A clean legible copy of a map that identifies by name, roads in the vicinity of the site, for example Hagstrom County maps; and
3. A map of the site to scale that includes as-built diagrams of major surface topological features such as buildings, roads and parking lots. This map should also include as-built diagrams of engineering controls making sure that the engineering controls are clearly distinguishable. The engineering controls may be lightly shaded. If the engineering control is greater in size than 1 acre, the map/diagram should show the areas of highest contaminant concentrations.

### **Guidance for the Submission of a Filed Deed Notice**

All deed notice documents must be clear, legible and in a format compatible with the county recording requirements. Some counties have size requirements for the filing of maps and figures. This must be determined prior to submission of a draft or final Deed Notice for DEP approval. In some cases, the maps may be reduced to meet filing needs, however; the scale shall be accurate and the map must be legible. After the Deed Notice has been approved by the Department and filed in accordance with N.J.S.A. 58:10B-13(a) submit the following to the NJDEP case manager:

- a) Four copies of the filed deed notice with exhibits, which has been stamped with the county docket number.
- b) Electronic copies of all exhibit maps and figures in GIS Compatible format. In order for the Deed Notice to be considered in acceptable GIS Compatible format, the map must be in State Plane Coordinates, North American Datum (NAD) 1983. In addition, the electronic file which contains the map must be accompanied by the Metadata file and associated Information File. For requirements on electronic data submission, see N.J.A.C. 7:1 Appendix A. For additional guidance, see the version of the Guidance for the Submission and Use of Data in GIS Compatible Format most recent to the time of submission. This guidance document can be found at [www.state.nj.us/dep/srp/regs/techrule/techgis2.htm](http://www.state.nj.us/dep/srp/regs/techrule/techgis2.htm).
- c) Proof that the governing body has been notified that contaminants will exist above residential soil criteria, the specifications of the restrictions on the use of or access to the property and the engineering or institutional controls that exist and shall be maintained.

### Administrative Checklist for Engineering Control Proposal(s)

Site Name \_\_\_\_\_

Site Street Address: \_\_\_\_\_

Municipality: \_\_\_\_\_ County: \_\_\_\_\_

Block(s) : \_\_\_\_\_ Lot(s) : \_\_\_\_\_

Case Number: \_\_\_\_\_

(please check one)

Residential Reuse \_\_\_\_\_

Nonresidential Reuse \_\_\_\_\_

Person Submitting Checklist: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_-\_\_\_\_

Date: \_\_\_\_\_

An engineering control proposal must include and address the following criteria:

	<u>YES</u>	<u>NO</u>	<u>NA</u>
1. Proposal was submitted using the NJDEP Guidance for the Remediation of Contaminated Soils. If not applicable, provide an explanation;	___	___	___
2. Narrative detailing the future use of the site and compatibility with the selected engineering control;	___	___	___
3. Site drawings and specifications signed and sealed by a New Jersey Professional Engineer. If the engineering control is completed prior to NJDEP review and approval, site drawings and specifications signed and sealed by a New Jersey Professional Engineer still need to be provided to the NJDEP for review/approval;	___	___	___
4. Site drawings and specifications (design and construction items) shall include the following key factors:			
a) Cap/Wall/Liner Construction;	___	___	___
b) Surface water controls and erosion;	___	___	___
c) Generated gas control systems;	___	___	___
d) Leachate controls;	___	___	___
e) Ground water monitoring and controls; and	___	___	___
f) Critical construction quality assurance issues:			
1) designed to withstand the expected vehicular traffic and industrial operations;	___	___	___
2) adequate to avoid damage from freeze/thaw action;			
3) properly graded and has a good drainage system to avoid ponding on the finished surface; and	___	___	___
4) life expectancy of the proposed engineering			

control(s);

\_\_\_ \_\_\_ \_\_\_

5. Evaluation detailing the appropriateness (surrounding use area, potential future land uses on site, etc.), as well as the long-term and short-term effectiveness of the engineering control(s), with the contaminant characteristics (eg. toxicity, mobility, volume, etc.). The evaluation shall provide assurances that the proposed engineering control is protective of human health and the environment;

\_\_\_ \_\_\_ \_\_\_

6. Maintenance and monitoring program of the proposed engineering control. Certification shall be provided to the NJDEP every two years in writing that the institutional and engineering controls are being properly maintained and continue to be protective of public health and safety and the environment. Any certification shall include the information relied upon to determine that no changes have occurred;

\_\_\_ \_\_\_ \_\_\_

7. Engineering control is in compliance with all applicable federal, state and/or local laws or regulations including, if applicable, RCRA/HWSA, CERCLA/SARA, NCP, local municipal solid waste plans/codes, floodplain/woodland regulations/control, stream encroachment regulations, soil and sediment control certifications, Toxic Substance Control Act, county/municipal zoning and landuse regulations;

\_\_\_ \_\_\_ \_\_\_

- 7A. Have all required permits been issued and/or applied for?

\_\_\_ \_\_\_ \_\_\_

8. Has notification been provided to the NJDEP and the municipal clerk of each municipality in which the site is located prior to the implementation of the engineering control in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.4?

\_\_\_ \_\_\_ \_\_\_

The above list consists of the key criteria that are required to be addressed for the approval of an engineering control proposal; however, this list is not meant to replace the Technical Requirements for Site Remediation, N.J.A.C. 7:26E nor to determine the completeness of a remedial action selection.